

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Ronald and Josephine Klein Living Trust,  
Ronald D. Klein, Trustee,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee.

Case Nos: 16A 0133 & 17A 0051

Decision and Order Affirming the Decisions  
of the Keith County Board of Equalization

**For the Appellant:**

Lindsay E. Pedersen,  
Katherine R. Hall, Attorney at Law, PC, LLO

**For the Appellee:**

Randy Fair,  
Keith County Attorney

These appeals were heard before Commissioners James D. Kuhn and Robert W. Hotz.

**I. THE SUBJECT PROPERTY**

The Subject Property is an agricultural parcel located in Keith County consisting of 167.94 acres. The legal description of the parcel is found at Exhibit 1. Property record files for the Subject Property are found at Exhibits 7 and 8.

**II. PROCEDURAL HISTORY**

The Keith County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$613,800<sup>1</sup> for tax year 2016 and \$584,305<sup>2</sup> for tax year 2017. Ronald and Josephine Klein Living Trust (the Taxpayer) protested these assessments to the Keith County Board of Equalization (the County Board) and requested assessed valuations of \$467,835<sup>3</sup> for 2016 and \$420,000<sup>4</sup> for 2017. The County Board determined that the taxable value of the Subject Property was \$613,800<sup>5</sup> for tax year 2016 and \$584,305 for tax year 2017.<sup>6</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 2.

<sup>5</sup> Exhibit 1.

<sup>6</sup> Exhibit 2.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged Exhibits 1 through 54; Exhibits 55, 56, and 57 were offered at the time of hearing and admitted without objection. The Commission held a hearing on August 31, 2018, with Commissioner Hotz presiding.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>7</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>8</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>9</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>10</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>12</sup> The County Board need not

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<sup>7</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>8</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>11</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>12</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>13</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>14</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>15</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>16</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>17</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>18</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>19</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>20</sup> All real property in Nebraska subject to taxation shall be assessed as of

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<sup>13</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>14</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>16</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>17</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>18</sup> *Id.*

<sup>19</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>20</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

January 1.<sup>21</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>22</sup>

## **B. Summary of the Evidence**

According to the County Assessor's records, the Subject Property is a 167.94 acre parcel of which 28.78 acres are dry cropland, 8.06 acres are grassland, 130.70 acres are irrigated cropland, and 0.40 acres are road.<sup>23</sup>

Bart Woodward testified on behalf of the Taxpayer. Mr. Woodward is a farm manager and real estate broker. He holds a degree in agricultural economics from the University of Nebraska and has been a certified general appraiser specializing in agricultural properties since 1992. Mr. Woodward has completed appraisals throughout Nebraska, but primarily in central Nebraska. He typically performs 70 to 80 appraisals per year for properties ranging in size from 80 to 5,000 acres. Mr. Woodward performed an appraisal of farmland in Dawson County also owned by the Taxpayer.<sup>24</sup> Renae Zink, Keith County Assessor, testified on behalf of the County Board. Ms. Zink is a licensed appraiser and also holds the State Assessor Certificate.

The most notable feature of the Subject Property is that the irrigated portion (approximately 78% of the total land) uses gravity irrigation rather than center pivot irrigation. According to Mr. Woodward, pivot irrigation involves an automated mechanical device that passes over the ground and sprinkles water over the cropland. Gravity irrigation, in comparison, involves creating ridges in the cropland, laying pipes, and using siphons and the force of gravity to move water to each row of crops. Gravity irrigation is more labor intensive than pivot irrigation, in part because the pipes usually must be removed after each season and re-laid the next season. The cost of pivot irrigation varies based on the characteristics of the land, including terrain, shape, and land features. For the Subject Property, the shape of the parcel makes efficient operation of pivot irrigation difficult, and no single pivot could be installed that would reach the entire

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<sup>21</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>22</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>23</sup> Exhibits 6, 7, and 57 Exs. 7 and 8 also contain the County Assessor's breakdown of these broad categories by Land Capability Group (LCG) or Land Value Group (LVG). The evidence reflected some disagreement between the parties as to whether portions of the non-irrigated land should be considered waste or grassland.

<sup>24</sup> Commission Case Nos. 16A 0132 & 17A 0050 relate to the appeals of the Taxpayer from the Dawson County Board of Equalization.

parcel.<sup>25</sup> Additionally, the parcel includes telephone poles that would be cost-prohibitive to remove or relocate. Mr. Woodward testified that, in his opinion, farm buyers prefer land that can be pivot irrigated.

Prior to the hearing, Mr. Woodward reviewed an appraisal performed by a different certified general appraiser, Garrett Q. Paisley, on the Subject Property (the Paisley Appraisal).<sup>26</sup> Mr. Paisley did not testify at the hearing. Mr. Woodward testified that the methodology used in the Paisley Appraisal was appropriate for the Subject Property, and the sales of comparable properties were arm's length transactions. The Paisley Appraisal concluded that the market value of the Subject Property as of July 30, 2016, was \$600,000.<sup>27</sup> Mr. Woodward testified that, in his opinion, the market was stable during that time period, so the value on July 30, 2016, would have also been accurate on both January 1, 2016, and January 1, 2017. Mr. Woodward agreed with the Paisley Appraisal conclusion of value. Mr. Woodward further testified that, in his opinion, the value of \$3,600 per acre was an appropriate value for the Subject Property.

The Paisley Appraisal makes use of six comparable properties, all of which predominantly used gravity irrigation rather than center pivot irrigation. However, only three of the properties used are actually located in Keith County. Of these three, the per acre sales prices ranged from \$3,385 to \$6,437, with the median sale at \$5,276.<sup>28</sup> Of the other three properties, two are located in Garden County and one is located in Lincoln County; for these three properties, the per acre sales prices ranged from \$3,000 to \$6,900, with the median sale at \$3,712.<sup>29</sup> Based on this data, the Paisley Appraisal concludes that the Subject Property should be valued at \$3,600 per acre, which may be substantially lower than the value indicated if only sales from Keith County were considered.<sup>30</sup>

Ms. Zink testified that the properties from Garden County are less desirable because they belong to a different Natural Resources District, which governs the use of water on those

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<sup>25</sup> Maps of the Subject Property can be found at Ex. 15:3, 54:29, and 55:1.

<sup>26</sup> Copies of this appraisal were received as Exhibit 30 (offered by the County Board) and Exhibit 54 (offered by the Taxpayer).

<sup>27</sup> The Commission understands this to represent the actual (market) value. Neb. Rev. Stat. §77-201 provides, in part, that "Agricultural land ... shall be valued at seventy-five percent of its actual value." Assuming an actual value of \$600,000, the Subject Property would be valued for the purpose of taxation at \$450,000.

<sup>28</sup> Exhibit 30:52.

<sup>29</sup> Id.

<sup>30</sup> The appraisal does note that the Garden County sales are "located in a weaker market area" than the Subject Property, so "[q]ualitative consideration will be given for location in developing an indication of market value for the subject." However, the nature of the consideration given is not clear from the appraisal itself, and as noted above, Mr. Paisley did not appear at the hearing to provide further details about his methodology.

properties. She also noted that different market areas exist within Keith County itself, and the Garden County properties were closest in proximity and soil type to Keith County's Market Area One. Ms. Zink testified that properties in Market Area Three, such as the Subject Property, are more desirable for farming due to the soil quality, whereas properties to the northwest, including Market Area One and the Garden County properties, generally have sandier soil and are more often used for ranchland. Ms. Zink also testified that some of the comparable sales reflected only one of multiple parcels sold as part of a single transaction (Comparable Sales Nos. 1 and 2), or sales in which the reported acreages and land use differed from county records (Comparable Sale No. 3).

The properties deemed comparable in the Paisley Appraisal vary significantly by size; three of the six properties were less than half the size of the Subject Property and a fourth was only marginally larger than these three. As the size of a property increases, its per-unit value usually decreases.<sup>31</sup> Application of this general rule would suggest that the four smaller parcels used as comparables would have a higher per acre sales price, and require an adjustment to accurately reflect the per acre value of the Subject Property. However, the Paisley Appraisal indicates that no adjustments were made to its valuation of the comparables to account for size.<sup>32</sup> Additionally, the Paisley Appraisal makes adjustments for land use, but not for soil type.<sup>33</sup> On the irrigated portions of the Subject Property, for example, the 2017 assessment of irrigated acres with the highest soil quality (1A) are valued at \$4,355 per acre,<sup>34</sup> whereas irrigated acres with the lowest soil quality (4A) are valued at \$3,840 per acre.<sup>35</sup>

Ms. Zink generally testified that the methodology used to assess the Subject Property was consistent with professionally accepted mass appraisal methods, and that countywide statistics demonstrated that agricultural properties were valued within the required statutory range.<sup>36</sup> She noted that reducing the per acre value of soil types of one parcel would defeat the purpose of equalization, since portions of the parcel would be valued lower than similar portions of parcels in the same market area. She also disputed Mr. Woodward's assertion that parcels with gravity

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<sup>31</sup> Appraisal Institute, *The Appraisal of Rural Property*, 2<sup>nd</sup> ed., 2000, at 240.

<sup>32</sup> Ex. 54.51.

<sup>33</sup> Ex. 54.52.

<sup>34</sup> Ex. 7:2.

<sup>35</sup> Ex. 7:2. For tax year 2016, the assessment of irrigated acres with the highest soil quality (1A) are valued at \$4,585 per acre, whereas irrigated acres with the lowest soil quality (4A) are valued at \$4,040 per acre. Ex. 8:1.

<sup>36</sup> See *Reports and Opinions of the Property Tax Administrator*, Keith County, April 2016; *Reports and Opinions of the Property Tax Administrator*, Keith County, April 2017.

irrigation are less desirable than those with pivot irrigation, due to a moratorium on well drilling in Keith County that renders the wells that support the gravity irrigation more valuable to potential buyers.

The Nebraska Supreme Court has determined that, when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence to rebut the presumption in favor of the County Board's valuation.<sup>37</sup> In this case, the Taxpayer has presented such an appraisal, and so the presumption in favor of the County Board has been rebutted. As discussed above, however, even with the presumption rebutted, the burden of proof remains on the Taxpayer to show by clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable.<sup>38</sup> The "clear and convincing" evidence required to reverse a decision of the County Board is a higher evidentiary standard than the "competent" evidence required to rebut the presumption. Thus, a taxpayer may be able to rebut the initial presumption without reaching the level of proof required to obtain relief. Due to the analytical issues and disputed conclusions of the Paisley Appraisal outlined above, the Commission finds that the Taxpayer has not presented the clear and convincing evidence necessary to reverse the determination of the County Board of Equalization.

## V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

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<sup>37</sup> *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>38</sup> *Id.*

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Keith County Board of Equalization determining the taxable value of the Subject Property for tax years 2016 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax year 2016 is \$613,800.
3. The taxable value of the Subject Property for tax year 2017 is \$584,305.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2016 and 2017.
8. This Decision and Order is effective for purposes of appeal on November 9, 2018.<sup>39</sup>

Signed and Sealed: November 9, 2018

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James D. Kuhn, Commissioner

SEAL

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Robert W. Hotz, Commissioner

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<sup>39</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.